

Remarks

Claims 1-15, inclusive, are under consideration.

The Specification is amended to indicate that U.S. Serial No. 08/986,016 is abandoned.

Claims 1-3, 5, 6, 9 and 10 are amended to obviate rejections under 35 U.S.C. 112, second paragraph.

The rejection of claims 12 and 13 under 35 U.S.C. 112, first paragraph, is not warranted, and is hereby traversed. The LM 609 antibody is indeed the same as that recited in the claims, and the specification is amended. Hybridoma HB 9537 has been deposited with the ATCC under the provisions of the Budapest Treaty and accepted on September 15, 1987. A copy of ATCC Form BP 5/9 and a copy of a further communication from ATCC are attached hereto as Appendix A.

The rejection of claims 1-11, 14 and 15 under 35 U.S.C. 103(a) as unpatentable over Hoogenbloom et al. in view of Adair et al. is not warranted, and is hereby traversed.

As recognized by the Examiner, Hoogenbloom et al. do not specifically teach that mouse CDR's may be grafted onto the light chain or the heavy chain of human variable domains. Nor does Hoogenbloom et al. suggest to one of ordinary skill that this should be done.

The Examiner's contention that Adair teaches that "... CDR3 of either the light or heavy chain may be flanked with human framework regions 3 and 4" is mere speculation. Adair et al. provide no motivation for one of ordinary skill to do so. As a matter of fact, Adair et al. teach away from the claimed invention inasmuch as Adair et al. report failure of CDR grafting alone. See, for example, col. 25, lines 35-50. Such report of failure clearly could not have provided the requisite motivation, nor reasonable expectation of success, to one of ordinary skill in the art.

It must also be kept in mind that Hoogenbloom et al. do not teach or suggest the grafting of CDR loops into both heavy and light chains as presently claimed. Adair et al. do not cure such deficiencies of Hoogenbloom et al. as a reference against the present claims

even if, *arguendo*, the teachings of Hoogenbloom et al. are somehow deemed to be combinable with those of Adair et al. Withdrawal of this rejection is believed to be in order.

The rejection of claims 12 and 13 under 35 U.S.C. 103(a) as unpatentable over Hoogenbloom et al. in view of Adair et al. and Brooks et al. is traversed as well.

The Examiner notes that neither Hoogenbloom et al. nor Adair et al. specifically disclose humanization of the LM 609 antibody utilizing phage display libraries. Applicants agree.

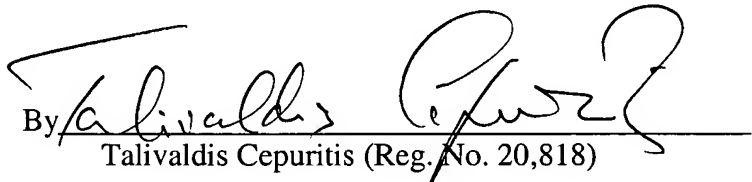
Brooks et al., however, do not cure any of the deficiencies of Hoogenbloom et al. and Adair et al. as references against these claims. Brooks et al. merely describe the properties of a particular monoclonal antibody. Such a description does not provide any proper additional support for the attempted rejection, but militates against any modification thereof. The Examiner's own unsupported testimony as to what would have been obvious to one of ordinary skill cannot support the rejection.

Prima facie obviousness has not been established.

The present amendments to the claims and the accompanying discussion are believed to dispose of all issues in this case and to place this application in condition for allowance. Entry of this amendment and early such action is solicited.

Respectfully submitted,

October 18, 2004

By 
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American Type Culture Collection

12301 Parklawn Drive • Rockville, MD 20852 USA • Telephone: (301)881-2600 Telex: 898-055 ATCCNORTH

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BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

INTERNATIONAL FORM

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3
AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.2

To: (Name and Address of Depositor or Attorney)

Scripps Clinic and Research Foundation
10666 North Torrey Pines Road
La Jolla, California 92037
Attention: Raymond H. Kahn, Ph.D., Industrial Liaison Officer

Deposited on Behalf of: Scripps Clinic and Research Foundation

Identification Reference by Depositor

ATCC Designation

Murine hybridoma LM509 (SCRF 130.0)

HB 9537

The deposit was accompanied by: ___ a scientific description ___ a proposed taxonomic description indicated above.

The deposit was received September 15, 1987 by this International Depository Authority and has been accepted.

AT YOUR REQUEST:

- ☒ We will inform you of requests for the strain for 30 years.
☐ We will not inform you of requests for the strain.
☐ The strain is available to the scientific public upon request as of

The strain will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the strain.

If the culture should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace it with a living culture of the same.

The strain will be maintained for a period of at least 30 years after the date of deposit, and for a period of at least five years after the most recent request for a sample. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the culture cited above was tested September 18, 1987. On that date, the culture was viable.

International Depository Authority: American Type Culture Collection, Rockville, MD 20852 USA

Signature of person having authority to represent ATCC:

Bobbie A. Brandon
(Mrs.) Bobbie A. Brandon, Head, Patent Depository

Date: September 18, 1987

cc: Edward P. Ganson, Ph.D.

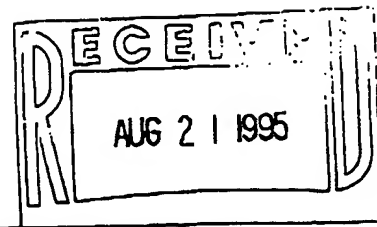
Form BP 4/9

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August 17, 1995

130.0
SCR 0105P

Thomas Fitting
The Scripps Research Institute
10666 North Torrey Pines Road
La Jolla, CA 92037

RE: ATCC HB 9537 (0105P)


Dear Mr. Fitting:

In response to your letter of August 10, 1995, ATCC HB 9537 was deposited with the ATCC under the Budapest Treaty on September 15, 1987.

To answer your inquiry regarding provisions for recision of a Budapest Treaty deposit, there are no such provisions. Once a biological material is deposited under the Budapest Treaty, ATCC is required to maintain that biological for a period of 30 years or 5 years after the most recent request for the biological. During this term, you cannot remove the biological from deposit at the ATCC, nor can you convert from Budapest deposit to non-Budapest deposit. The Budapest Treaty rules of deposit are quite clear on this matter.

If you have any further questions, please do not hesitate to contact me. I hope I have been of some assistance.

Very truly yours,


Annette L. Bade
Director, Patent Depository
ATCC Patent Counsel

ALB/pgo

APPENDIX A (Page 2 of 2)

AFFILIATED ORGANIZATIONS

American Association of Immunologists • American Institute of Biological Sciences • American Phytopathological Society • American Society for Biochemistry and Molecular Biology • American Society for Cell Biology
American Society for Microbiology • American Society for Virology • American Society of Human Genetics • American Society of Parasitologists • American Society of Tropical Medicine and Hygiene • American Society of Zoologists
Canadian Federation of Biological Societies • Canadian Society of Microbiologists • Genetics Society of America • Infectious Diseases Society of America • Mycological Society of America • National Research Council —
National Academy of Sciences • Pharmaceutical Research and Manufacturers of America • Society for Leukocyte Biology • Society for In Vitro Biology • Society for Industrial Microbiology • Society of Protozoologists

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